

PART 3 INDEPENDENT GROUPS

Chapter 11: Americans For Tax Reform

The conduct of Americans for Tax Reform (“ATR”) in the 1996 elections provides a prime example of campaign abuses involving tax-exempt organizations. Despite a commitment to nonpartisanship in its incorporation papers, ATR engaged in a variety of partisan activities on behalf of the Republican Party during the 1996 election cycle. ATR also accepted \$4.6 million in soft dollars from the Republican National Committee and spent them on election-related efforts coordinated with the RNC. The ability of ATR to act as an alter ego of the Republican National Committee in promoting the Republican agenda and Republican candidates, while shielding itself and its contributors from the accountability required of campaign organizations, underscores the need for reform of the rules governing the political activities of such organizations.

The case of ATR is also a prime example of the unwillingness of the Majority to examine improper and apparently illegal activities of the RNC and Republican-oriented entities with the same vigor and aggressiveness it demonstrated in examining the activities of the Democratic National Committee and Democratic-oriented organizations. Indeed, the refusal of the Majority to exercise the lawful authority of the Committee in the face of ATR’s repeated defiance of Committee document and deposition subpoenas belies its stated commitment at the outset of this investigation to approach the issues in a balanced and bipartisan manner.

Despite ATR’s noncompliance and the Committee’s failure to enforce its authority to investigate ATR’s activities, the Minority has been able to piece together the outline of coordinated campaign efforts between the RNC to nonpartisanship and ATR that appear to have circumvented hard and soft money restrictions, evaded disclosure requirements, and abused ATR’s tax-exempt status.

FINDINGS

(1) The Republican National Committee improperly and possibly illegally gave \$4.6 million to Americans for Tax Reform to fund issue advocacy efforts including mail, phone calls, and televised ads. By using ATR as the nominal sponsor of issue advocacy efforts, the RNC effectively circumvented FEC disclosure requirements and the requirement to fund 65% of the cost of its issue advocacy with hard (restricted) money.

(2) By operating as a partisan political organization on behalf of the Republican Party, Americans for Tax Reform appears to have violated its status as a tax-exempt, social welfare organization under section 501(c)(4) of the tax code.

(3) ATR's issue advocacy activity was conducted, in part, by an affiliate called the Americans for Tax Reform Foundation, which appears to be a

violation of the foundation's status as a 501(c)(3) charitable organization, contributions to which are tax deductible.

BACKGROUND

ATR was established in 1985 by a group of prominent Republicans to rally support for then-President Reagan's tax reform proposals.¹ It was created as a tax-exempt corporation under section 501(c)(4) of the Internal Revenue Code.² Its articles of incorporation state in article 3:

The purpose for which this corporation is organized and operated shall be to engage in such charitable, scientific, educational and political activities relating to tax reform, the promotion of tax fairness and economic prosperity as may qualify it as exempt from federal tax under section 501(c)(4) of the Internal Revenue Code.³

Article 6 of ATR's articles of incorporation states that ATR's purposes must be pursued without partisanship:

The Corporation's purposes shall be pursued wholly without partisanship, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office, [nor] engage in any partisan activity.⁴

ATR has a number of affiliated organizations.⁵ The oldest is Americans for Tax Reform Foundation ("ATRF") which was created in conjunction with ATR in 1985 as a tax-exempt corporation under section 501(c)(3) of the Internal Revenue Code.⁶ ATRF shares office space, facilities, equipment, and personnel with ATR. ATRF's stated role is to educate the public about the need to reduce taxes and simplify the federal tax system.⁷ Article 6 of ATRF's articles of incorporation states that it "shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office, nor engage in any partisan activity."

GROVER NORQUIST

Since 1987, Norquist has served as the president and guiding force of both ATR and ATRF.⁸

Norquist's activism in Republican affairs is long standing. In the early 1980s, after obtaining a degree from Harvard Business School, Norquist served as director of the National College Republican Committee, the collegiate arm of the RNC.⁹ He then worked for Americans for the Reagan Agenda, a grassroots organization supporting President Reagan; the U.S. Chamber of Commerce; and Citizens for America, another grassroots organization backing the Reagan agenda.¹⁰ After joining ATR as president, Norquist continued to engage in Republican Party activities. In both 1988 and 1992, he served as staff to the Republican Platform Committee.¹¹ In 1988, Norquist was an advisor to the Bush/Quayle presidential campaign.¹²

Norquist has also, since the early 1980s, been a close advisor and confidant of the Republican Speaker of the House, Newt Gingrich, and is also a registered foreign agent.¹³

In Rock the House, a book written by Norquist on the 1994 Republican takeover of the House of Representatives, prominent Republicans praise his work on behalf of the Republican Party. Conservative radio talk show host Rush Limbaugh calls Norquist “perhaps the most influential and important person you’ve never heard of in the GOP today.” (Original emphasis.) RNC Chairman Haley Barbour calls Norquist “a true insider.” Speaker Gingrich states that Norquist “has entree at every level of the Republican Party.” Journalist Michael Barone of U.S. News and World Report states that “Norquist is one of the few people who both predicted and worked for the Republican victories in November 1994.” Norquist’s inclusion of these statements in his book is evidence that he considers them accurate descriptions of his involvement with the Republican Party.

Documents produced to the Committee by the RNC demonstrate Norquist’s continued involvement with the Republican Party during the 1996 election cycle. A December 6, 1994, memorandum on RNC stationery from Donald Fierce, counselor to the RNC chairman, prepared at the threshold of the 1996 election cycle,¹⁴ is entitled “Core Working Group” and lists key personnel from the RNC, Republican Governors Association, and outside organizations sympathetic to the Republican Party, including Norquist as president of ATR. A March 4, 1996, memorandum from Curt Anderson, RNC political director, to RNC Chairman Haley Barbour,¹⁵ states: “You had asked us in Atlanta to come up with ideas for a group that would encompass the leadership of the base Republican coalition.” On that list is Norquist. An August 22, 1996, RNC media advisory states that, during the Democratic National Convention, Norquist is available to answer press inquiries as a “Republican surrogate.”¹⁶

Other public statements also portray Norquist as actively engaged in the effort to elect Republicans to office in 1996. When Representative Bill Paxon, head of the National Republican Congressional Committee, was asked to “list the most important people or groups behind the Republicans’ effort to maintain control of the House” in 1996, the first name he gave was Norquist.¹⁷ When Speaker Gingrich held a September 1996 dinner in his so-called “Dinosaur Room” and discussed the state of House campaigns, Norquist attended.¹⁸ For his part, when asked in 1995 how to ensure dramatic tax reform, Norquist replied, “Elect a Republican president, and it will happen.”¹⁹

Norquist has spent the last decade becoming an increasingly important Republican Party insider, dedicated to electing more Republicans to office.²⁰ The facts and documents indicate that he has consistently used ATR to promote not only Republican ideas but also Republican candidates. In the 1996 election cycle, ATR’s partisanship culminated in a \$4.6 million contribution by the RNC, a sum which was more than four times ATR’s total income the previous year.²¹ ATR used this money, as well as large contributions directed to it by the RNC, to finance a range of election-related activities, including a multimillion-dollar direct mail and phone bank operation to counter anti-Republican ads on Medicare; television ads attacking Democratic candidates; media events and awards to assist Republican candidates and disparage Democratic

candidates; and weekly meetings of conservative activists at ATR's offices to encourage an organized response to 1996 election concerns. ATR undertook all of these activities without registering with the FEC as a political organization, without disclosing its contributors or expenditures, and without admitting any partisan or election-related objectives.

THE \$4.6 MILLION OCTOBER SURPRISE

In October 1996, the final month before the election, the RNC gave \$4.6 million to ATR - the single largest dollar transfer from a national political party to a tax-exempt organization in the history of American politics.

ATR has refused to provide an accounting of how it obtained the \$4.6 million from the RNC or how it spent the money. It has told the Committee that such information is outside the scope of the Committee's investigation, because "ATR has never engaged in electioneering of any sort. It has never advocated the election or defeat of any candidate for any office at any time; it has never run political advertising on any subject."²² The facts and documents show, however, that ATR used the \$4.6 million in RNC funds to finance a number of election-related efforts, including a multimillion-dollar direct mail-phone bank operation, in coordination with the RNC, to counter anti-Republican advertisements on the issue of Medicare.

For months prior to the transfer, the RNC had been objecting to television advertisements sponsored by organized labor and others criticizing the Republican Party for its positions on Medicare. The RNC claimed that the advertisements distorted the facts and that Republicans did not intend to reduce Medicare benefits. Yet, the RNC delayed spending funds to respond to those ads until October 1996. At an October 25 press conference, RNC Chairman Haley Barbour offered this explanation of the RNC's decision to delay spending:

[W]e made the decision not to borrow money last year or early this year in order to try to compete with the unions and the other liberal special-interest groups' spending. You see, our campaigns do come into the real election season late September and October without having spent all the money ... to match what the unions were doing. And you will see us -- you are seeing now, and have been throughout the month of October, you are seeing Republicans using the resources that we've raised in voluntary contributions to finish very strong, to make sure our message is in front of voters when they are making their voting decisions.²³

One step taken by the RNC to ensure that its message was "in front of voters when they are making their voting decisions" was to pay ATR \$4.6 million from the RNC's soft money account. ATR then used the money primarily for a direct mail and phone bank operation targeting 150 Congressional districts with 19 million pieces of mail and four million telephone calls on the issue of Medicare.²⁴

The ATR mailings are entitled: "Straight Talk About You, Medicare and the November 5 Election."²⁵ One mailing urges senior citizens to ignore "political scare tactics" involving

Medicare, and states “[t]here’s barely a difference between the Republican Medicare Plan and President Clinton’s Medicare Proposal.”²⁶

These mailings were handled by the John Grotta Company, the contractor that actually managed the Medicare direct mail and phone bank effort for ATR in October 1996. This company has also run direct mail campaigns for the RNC and is owned by an individual -- John Grotta -- who is a former western political director for the RNC as well as a former director of voter contact for the National Republican Senatorial Committee. A key planning document submitted by the John Grotta Company to ATR about these mailings is entitled, “A Strategic Direct Mail and Telemarketing Proposal to Inform and Activate the Seniors Electorate in Select Congressional Districts During the 1996 Election Season.”²⁷ The proposal’s use of the word “Electorate” to describe seniors and “1996 Election Season” to describe the relevant time period is evidence of an election-related purpose. The proposal states that, “[u]nlike other direct marketing companies, we possess unique campaign experience and telemarketing technology which allow us to target your mail and phone programs to produce the results you need.” The proposal cites “vast campaign and political expertise” and past “direct mail and telephone programs for winning Presidential, Gubernatorial, U.S. Senate and House Republican candidates” as two of the company’s selling points. (Emphasis added.)

RNC-produced documents provide further evidence that the Medicare effort was election driven. An undated memorandum produced to the Committee by the RNC entitled, “Memorandum for the Field Dogs,”²⁸ states in its entirety:

Re: Outside Mail and Phone effort

Attached is a rotten copy of the 1st of 3 mail piece[s] that will be sent to 150 selected congressional districts it will be directed at, a map of which has been included for your viewing pleasure.

We discussed this effort during Wednesday’s conference call.

This is an effort undertaken by Americans for Tax Reform. They are attempting to warn seniors about Democrat Medicare tactics...²⁹

This memorandum shows that the RNC had a copy of ATR’s first Medicare mailing before it was sent out -- it attaches the “piece that will be sent.” It shows that the RNC knew it was the first of three mailings, and that it was being sent, not to specified cities or counties or zip codes, but to specified Congressional districts. To ensure that RNC field personnel would know exactly which districts were targeted, the memo included “a map ... for your viewing pleasure.” The memo also states that RNC field personnel had discussed the “effort undertaken by Americans for Tax Reform” in a previous “Wednesday’s conference call.”

This memorandum demonstrates advance RNC knowledge not only of ATR’s general Medicare effort, but also of ATR’s first specific mailing and of the 150 congressional districts

selected to receive it. The fact that the mailing targets congressional districts, rather than cities or zip codes, again demonstrates an election-related intent. The fact that this information was communicated to RNC field personnel doing election-related work at the time -- and in the last month before election day -- provides still more evidence of an election-related purpose.

Additional documents analyzed by the Minority indicate that the RNC knew when it gave ATR the \$4.6 million that ATR intended to spend the funds on the Medicare issue. Consisting primarily of invoices, check copies, wire transfers and bank records, this evidence shows that the RNC's \$4.6 million "donation" to ATR actually consisted of four payments made throughout the month of October in amounts and on dates that enabled ATR to pay the bills for the Medicare direct mail and phone bank operation.

A key document is an October 29, 1996, invoice provided to ATR's executive director, Audrey Mullen, from the John Grotta Company.³⁰ This invoice shows that the company sent out three mailings, directed two rounds of telephone calls, and purchased a database for ATR. It shows ATR owing various amounts throughout October 1996. The grand total for the entire direct mail and phone bank operation, not including postage for the mailings, is \$3,325,498.60, of which only about \$608,000 was still owed on October 29.

ATR's bank records,³¹ provided by Riggs National Bank in response to a Committee subpoena,³² show that on October 1, 1996, ATR had two bank accounts with a combined total of \$294,078.50. This amount, less than a tenth of the total cost of the direct mail-phone bank operation, would have been insufficient to pay for that effort. The bank records show, however, that beginning on October 4, the RNC began transferring funds directly into one of ATR's bank accounts in amounts that would prove more than enough to pay for the entire direct mail-phone bank operation.

The timing of the RNC payments is also revealing. According to the October 29 invoice, ATR owed John Grotta an initial payment of \$195,177.50 on October 7. On October 4, three days before that initial payment was due, the RNC gave \$2 million to ATR. The RNC didn't write a check to ATR -- the bank documents show that the RNC wire-transferred the funds directly from its soft money account into ATR's bank account.³³ Five days later, on October 9, ATR paid its bill to John Grotta.³⁴

Two weeks later, ATR faced another \$1,313,677.40 in bills owed to the John Grotta Company. These bills were due on October 18 and October 22. On October 17, the RNC made a second payment to ATR, this time in the amount of \$1 million. Again, this money was wired directly into ATR's bank account.³⁵ Within days of receiving it, ATR paid the John Grotta Company \$1,418,544.38.³⁶

Yet another Grotta bill came due on October 24, in the amount of \$1,104,000. On October 23, however, the total in ATR's bank account was only \$216,344.93. But on October 25, the RNC made a third payment of \$1 million wired into ATR's account.³⁷ Within hours of receiving this million-dollar payment, ATR paid the John Grotta Company \$1,104,000.³⁸

The fourth and most telling payment came one week later, at the end of October. ATR faced a final Grotta bill in the amount of \$607,776.72. On the day before that bill was due, the total in ATR's bank account was only \$70,085.65. But on the next day -- the day when the \$607,000 bill was due -- the RNC wired ATR a fourth and final payment in the amount of \$600,000.³⁹ Within two hours of receiving the RNC funds, ATR paid its final bill for the Medicare direct mail-phone bank operation.⁴⁰

The timing and amounts of RNC payments to ATR, when compared to the billing dates and amounts owed by ATR to the John Grotta Company, suggest ongoing communication and coordination between ATR and the RNC. They indicate, for example, that the RNC's \$600,000 payment to ATR just in time for ATR to pay a \$600,000 bill was more than coincidence.

However, when asked publicly about the transactions, RNC Chairman Haley Barbour and ATR President Grover Norquist denied that the \$4.6 million transfer was part of any coordinated effort between the two organizations. Barbour told the Washington Post that "he had no understanding with Norquist about how the money would be spent,"⁴¹ while Norquist told the press that he had made "no specific commitment"⁴² to the RNC on how ATR would spend the money.

But other statements by the two men indicate the opposite. When asked to comment on the \$4.6 million, Norquist told the Washington Post that ATR "just ramped up on stuff we were going to do anyway. They, the RNC, the conservative movement, knew the projects we were working on."⁴³

When asked about the \$4.6 million at a news conference at RNC headquarters on October 29, 1996, Barbour said the following:

Sure. We made a contribution to Americans for Tax Reform, which is a conservative, low-tax organization. You'll see in our FEC report now and at the end of the year that we've made contributions to a number of organizations that are like-minded, share our views, promote our ideas.

As you know, when we do advertising, when we do advocacy, no matter what we do, we typically have to pay for it, either totally with FEC dollars or a mixture of FEC and non-FEC dollars. While our fundraising among small donors has been nothing short of spectacular, we often find ourselves in the position where we cannot match up non-FEC funds with enough FEC funds.

So, when we came to that point, we decided we would contribute to several groups who are like-minded and whose activities we think, while they're not specifically political, we think are good for the environment for us.⁴⁴ (Emphasis added.)

In a Washington Post article on February 9, 1997, again referring to the RNC contribution to

ATR, Barbour was quoted as saying that groups like ATR “‘have more credibility’ in pushing a political message than the parties themselves.”⁴⁵

These statements by the RNC chairman indicate that the RNC gave ATR \$4.6 million in soft money for two reasons. The first reason was that the RNC did not have enough matching hard dollars to allow the RNC to do the desired issue advocacy itself. FEC filings demonstrate just how few hard dollars the RNC had during the last month before the election. On September 30, 1996, the RNC reported having \$16.7 million on hand, of which only \$3.8 million was hard money; on October 16, of the \$3.9 million the RNC reported having on hand, none was hard money.⁴⁶ The FEC has ruled that issue advocacy undertaken by a national political party in a presidential election year must be paid for with a mix of 65 percent hard dollars and 35 percent soft dollars,⁴⁷ yet the RNC paid for the ATR Medicare mailings and phone calls without using a single hard dollar. The second reason the RNC gave for giving \$4.6 million to ATR in October was that political advertising sponsored by a group like Americans for Tax Reform had more credibility than advertising sponsored by the RNC itself. Norquist’s statement is unequivocal that the RNC already knew what projects ATR was working on -- one would assume that included ATR’s Medicare project whose projected cost was three times greater than ATR’s entire income the previous year.

The facts, documents and public statements of Barbour and Norquist, when viewed together, reveal a deliberate, coordinated strategy of moving RNC soft dollars to a tax-exempt organization to pay for an election-related direct mail and phone bank operation. Had the RNC undertaken that operation itself, it would have required substantial hard dollars which the RNC did not have. The resulting mailings and telephone calls were paid for entirely with soft dollars, drew on ATR’s greater credibility, and targeted 150 selected congressional districts presumably where Republican candidates needed help on the Medicare issue.⁴⁸

In addition to demonstrating coordination between the RNC and ATR to fund the Medicare direct mail-phone bank operation, the invoices and bank records provide evidence of the involvement in that operation by the Americans for Tax Reform Foundation, ATR’s affiliated charitable organization which is legally prohibited from engaging in campaign activity or operating for the benefit of a private interest like the Republican Party.⁴⁹ The documents suggest that of the \$4.6 million provided by the RNC, ATR transferred about \$2.3 million to the Foundation which, in turn, paid the John Grotta Company for almost half of the direct mail-phone bank bills. In effect then, the RNC funneled soft money through two tax-exempt organizations -- one a 501(c)(4) and one a 501(c)(3) -- to pay for an election-related effort it could not do on its own due to a shortage of hard dollars. ATR paid approximately \$1.8 million for the operation, while the ATR Foundation paid approximately \$1.5 million.⁵⁰ Additional proof of the Foundation’s involvement is provided by one of the mailings which states, underneath the heading “Straight Talk About You, Medicare & the November 5 Election”: “Paid for by AMERICANS FOR TAX REFORM FOUNDATION.”⁵¹

ATR TELEVISED ATTACK ADS

The RNC's \$4.6 million paid for more than the Medicare direct mail and phone bank operation. That operation cost approximately \$3.3 million plus postage. That leaves RNC funds in the range of \$1 million unaccounted for. Although Norquist told the Washington Post in December 1996, that ATR "didn't do televised issue ads,"⁵² and told the Committee in June 1997 that "it has never run political advertising on any subject,"⁵³ the evidence establishes that ATR did in fact produce and run television ads attacking Democratic candidates, the costs of which appear to have been paid at least in part with RNC funds.

A videotaped copy of a 1996 television ad attacking then-Representative Robert Torricelli, the Democratic senatorial candidate in New Jersey, for allegedly missing votes during his tenure as a Congressman, was provided to the Minority.⁵⁴ The ad states plainly in the closing frame that it was paid for by ATR. An invoice to ATR from a company called Title Wave requests roughly \$8,000 for producing an ad called "Missing."⁵⁵ In addition, ATR provided to the Committee invoices from a company called Mentzer Media Services, Inc. ("Mentzer"). These invoices show that Mentzer charged ATR \$325,230 for a 30-second television media buy in the New York/New Jersey media markets⁵⁶ and another \$56,656.25 for media buys in the Philadelphia/New Jersey media markets.⁵⁷ These media buys began in October and lasted until November 4, 1996, the day before the election. The Mentzer invoices do not specify the Torricelli/"Missing" ad, but that is the only ad which the Minority has evidence was broadcast in those markets. It is possible, however, that these media buys were for other ATR-sponsored television ads not yet identified.

ATR's bank records indicate that RNC funds were used by ATR to pay the bills related to this television attack ad. The records indicate that on October 4, 1996, the same day it received \$2 million from the RNC, ATR wrote a \$4,000 check to Title Wave as partial payment on the Torricelli/"Missing" ad's production costs.⁵⁸ Two weeks later, ATR wrote a \$4,900 check to a company called Soundwave.⁵⁹ The memo at the bottom of the check states that it is payment on an invoice for the "Torricelli ad." ATR's bank records also indicate that beginning October 8, ATR wire-transferred a total of \$374,830 to Mentzer Media Services for media buys.⁶⁰ Overall, at the beginning of October, ATR's bank account balances stood at just over \$290,000. After receiving the influx of RNC money, ATR spent over \$383,000 on producing and televising the television ad attacking then-Representative Torricelli.

Documentary evidence suggests ATR's possible involvement with other television ads as well during the 1996 election season. Two such television ads, both of which attack President Clinton by name, were allegedly sponsored by an organization called Women For Tax Reform. Both ran in Chicago in the last week of August, during the Democratic National Convention.⁶¹ These ads were announced at a news conference held at the National Press Club on August 21, 1996.⁶² The records of Women for Tax Reform indicate, however, that this organization was formed on August 15,⁶³ just six days earlier. Since six days hardly seems sufficient time for a new organization to develop, produce, and purchase air time for two television ads and announce them at a National Press Club briefing, the facts suggest that Women for Tax Reform must have had assistance prior to its formation.

That assistance was likely provided by ATR. The president of Women for Tax Reform was Audrey Mullen, who served concurrently as ATR's executive director.⁶⁴ In addition, Women for Tax Reform shared office space, facilities, equipment, and personnel with ATR.⁶⁵ In its application to the IRS for tax-exempt status, Women for Tax Reform states that it has a "special relationship" with ATR.⁶⁶ The extent to which ATR assisted Women for Tax Reform with its television ads cannot be determined conclusively, due to the refusal of both ATR and Women for Tax Reform to comply with Committee subpoenas for documents and deposition testimony. But the acknowledged relationship between the two organizations together with the timing of Women for Tax Reform's anti-Clinton ads so quickly after its formation suggest that ATR was more than a bystander in this matter.

Documents also suggest that ATR was working with the RNC to produce television ads attacking other Democratic candidates. Among the documents produced to the Committee by the RNC is the script of a television ad which was designed to attack Democratic candidates running for open seats.⁶⁷ The document states at the top, "RNC-TV/Open Seat TV:30/ 'Control.'" The ad calls for inserting a picture of a Democratic candidate, stamping "Wrong!!" over it, and then inserting the "Democrat Tax Record" under the picture. The last line of the ad reads: "For more information call Americans for Tax Reform." At the bottom of the document is a typewritten notation "As of 10/15/96 4:50 PM/ Approved by legal counsel." This document is compelling evidence of coordination between the RNC and ATR on television attack ads during the 1996 election season. It reveals a sufficient investment of resources to involve a written script and legal consultation three weeks before election day. Since RNC and ATR officials refused to be interviewed or to appear in response to a subpoena for deposition testimony, it is unclear whether any of the contemplated ads were broadcast. Whether or not a broadcast took place, however, this RNC-produced document is evidence of ATR-RNC coordination on political advertising.

ATR CANDIDATE ADVOCACY

During the 1996 election season, in addition to its Medicare operation and involvement with television ads attacking Democratic candidates, ATR used its taxpayer pledge and award programs to assist Republican candidates and attack Democratic candidates.

ATR first initiated its taxpayer pledge program in 1986.⁶⁸ Essentially, it consists of ATR's asking candidates for office to sign a pledge that, if elected, they will oppose efforts to raise taxes. ATR then publicizes, through media advisories, press conferences and advertisements, the willingness or unwillingness of a candidate to sign its pledge.⁶⁹

In 1986 -- the first year of its taxpayer pledge program -- the FEC found reason to believe that ATR had violated federal campaign laws by improperly coordinating with candidates the timing and distribution of its pledge media advisories.⁷⁰ ATR settled this matter with the FEC through a conciliation agreement in which it admitted violating the federal election laws and agreed to pay a \$1,000 civil penalty.

In 1994, in response to complaints from the Democratic Party, the FEC again investigated

ATR's taxpayer pledge program.⁷¹ The investigation initially focused on ATR activities during a 1994 special election in Kentucky, expanded to other 1994 congressional campaigns, and also included examination of ATR activities in 1995 with respect to the Dole presidential campaign.

In September 1996, the FEC general counsel issued a report on ATR's activities, including its dealings with the Dole presidential campaign.⁷² According to the general counsel's report, Norquist attended several events in 1995 at the request of the Dole for President Committee ("Dole campaign"). The first was a media event on April 7, in Washington, D.C., at which Senator Dole signed ATR's Taxpayer Pledge, an action he had not taken previously.⁷³ The second event, on April 10, was a "town hall meeting" in New Hampshire in which Senator Dole made his formal announcement for the presidency. According to the general counsel's report, the press stated that Norquist attended the event to assure reporters that Senator Dole had finally signed ATR's pledge.⁷⁴ After the announcement, Norquist reportedly flew with the Dole campaign to New York City and attended fundraisers for the Senator.⁷⁵ Norquist's transportation and accommodation costs were paid by the Dole campaign.⁷⁶ The general counsel's report describes similar media events that Norquist attended on behalf of 1994 congressional campaigns, as well as an ATR radio advertisement during the Kentucky special election which the general counsel determined contained "express advocacy," meaning that the radio ad advocated the defeat of the Democratic candidate and the election of the Republican candidate.

ATR told the FEC that Norquist had attended the 1994 and 1995 media events solely as a spokesman for the organization and "with the explicit understanding that [he] would not advocate the election or defeat of any candidate" and "would not discuss the candidate ... or the candidate's campaign outside the context of the taxpayer pledge."⁷⁷ However, the FEC general counsel's report concludes, in part:

Mr. Norquist's affidavits and press reports show that ATR and certain federal candidates coordinated the timing, and possibly the content, of press conferences and other press events where such candidates announced that they had taken ATR's pledges. Specifically, ATR coordinated Mr. Norquist's appearances at such events with ... Dole for President ATR's activities here appear analogous to those at issue in MUR 2269, [the 1986 enforcement action] a matter in which the Commission also found that ATR violated Section 441b(a). ... [S]uch committees appear to have accepted corporate in-kind contributions from ATR. Accordingly, this Office recommends that the Commission find reason to believe that ... Dole for President Committee ... violated 2 USC 441b(a). ... [I]t appears that other issues brought to light in this matter also require further investigation. ... ATR's documents also indicate that it provided candidates with ideas for their campaigns, i.e., it offered to coordinate tax rallies, its flyers provided candidates with ideas on how to win election and it offered free of charge extra-large copies of its tax pledge that were designed to assure adequate media coverage. These appear to be things of "value" and thus contributions. ... [T]his Office also recommends that the Commission approve the attached Subpoenas for documents and Orders for Written Answers.⁷⁸

The report made similar findings with respect to the 1994 Republican candidate committees. In

short, the report found reason to believe that ATR had engaged in improper coordination with Republican candidate committees and provided illegal in-kind corporate contributions to them by coordinating the pledge media events. The report recommended that the FEC find reason to believe that ATR had violated section 441b's prohibition against corporate contributions or, in the alternative, section 433(a)'s requirement for registration as a political committee. The report also recommended further investigation of ATR. While the general counsel's findings and recommendations received the support of three of five Commissioners,⁷⁹ a vote of four Commissioners is required to sustain an action, and the FEC ultimately closed the matter without further action.⁸⁰

Other than ATR's actions in 1995 with respect to the Dole presidential campaign, the FEC did not report on ATR's activities during the 1996 election cycle. It seems clear, however, that the FEC general counsel's negative findings regarding ATR's 1994 and 1995 activities had no deterrent effect, as ATR continued to use its pledge program to assist Republican candidates in 1996.

One key document is a March 8, 1996, letter on ATR stationery from Norquist to RNC Chairman Haley Barbour.⁸¹ In it, Norquist thanks Barbour for his letter "regarding our 'Taxpayer Protection Pledge', your support is always greatly appreciated." Norquist then writes:

If possible, we would like to receive an updated list of Republican candidates directly from the RNC. It is important that we receive this list soon, as we would like to bring as many candidates on board as possible. And, in so doing, make the tax issue a central campaign feature for Republican candidates.

In his own words, Norquist directly ties ATR's taxpayer pledge program to Republican campaign efforts.

On October 8, 1996 -- just one month before election day -- ATR held a Capitol Hill press conference to highlight candidates who had signed ATR's taxpayer pledge. This media event in Washington, D.C., was coordinated with numerous local media events across the country by candidates who had signed the pledge. According to ATR's own documents, its Washington press conference featured high-level speakers from the Dole campaign and GOPAC, a Republican political action committee set up by Speaker of the House Newt Gingrich.⁸² Also included among the speakers were a Republican Congressional candidate from Hawaii and senior executives from the Christian Coalition, the Eagle Forum, and the U.S. Chamber of Congress.⁸³ No Democratic candidates or representatives of Democratic-oriented organizations were included in the press conference.⁸⁴

Also in October 1996, ATR initiated a new program announcing "Enemy of the Taxpayer Awards." Media advisories by ATR on October 28, a week before election day, announced these awards to "the most pro-tax, pro-spending Members of the House of Representatives."⁸⁵ The 34 taxpayer "enemy" awards went to 33 Democrats and one Independent. Not a single Republican candidate was named.

ATR stated that it had based the awards on the recipients having voted “no” on four specified votes relating to taxes and a balanced budget. However, a review of the votes shows that two of the Democrats recipients, Representative Bill Hefner of North Carolina and Representative William Orton of Utah, were cited despite the fact that they had voted “no” on only three of the four votes, while two Republicans, Representative Amo Houghton of New York and Representative John Porter of Illinois, who had also voted “no” on three of the four votes, were not cited. This double standard between Democrats and Republicans with similar voting records is additional evidence of the partisan nature of ATR’s Enemy of the Taxpayer Award program.

At about the same time that ATR initiated its Enemy of the Taxpayer Awards, it also began citing incumbent Democratic congressmen as “Taxpayer Villain of the Month.” The target of ATR’s November Villain of the Month Award was Representative Ken Bentsen a Democrat from Texas, who at the time was involved in a run-off election. Over the course of five days from December 2, 1996, through December 6, 1996, ATR issued six different press releases citing Representative Bentsen as a “Taxpayer Villain” and criticizing his voting record on a wide variety of issues.⁸⁶ Every one of the press releases cited the fact that Representative Bentsen was facing a run-off election and gave the date of the election in December. It should also be noted that despite the fact that Representative Bentsen had been chosen as the “Taxpayer Villain” for the month of November 1996, the vast majority of the votes he was criticized for took place in 1995; indeed, the most recent vote for which he was criticized took place in April 1996.

In contrast to the “enemy” and “villain” awards given to Democrats in 1996, ATR issued hundreds of “Friend of the Taxpayer Awards” and “Defender of the American Taxpayer Awards” to Republicans. According to ATR’s published criteria, the 1996 Friend of the Taxpayer Awards went to House incumbents who had received a score of 90 percent or better on a series of 19 votes of interest to ATR and who had signed ATR’s Taxpayer Protection Pledge.⁸⁷ ATR gave this award to 208 Republicans (32 Senators and 176 Representatives) and one Democrat (Representative Barbara Rose Collins).⁸⁸ On September 27 -- six weeks before Election Day -- ATR issued a press release praising Republican Representative George Nethercutt of Washington for winning a Friend of the Taxpayer Award.⁸⁹ The release reveals, however, that Representative Nethercutt’s vote rating was 85 percent -- below the stated criteria for the award and clear evidence that an exception had been made for him.⁹⁰ Other Republicans who did not meet the 90 percent criterion also won the award, including Representatives Nathan Deal of Georgia and Michael Castle of Delaware.⁹¹ According to ATR materials, Representative Castle received the award even though he had not signed the taxpayer pledge.⁹²

On September 18, ATR issued more than 115 “Defender of the American Taxpayer Awards” to Republican Members of Congress who cosponsored legislation that opposed alleged efforts by the United Nations to impose a “tax” on American citizens.⁹³

ATR’s 1996 taxpayer awards reveal a clear partisan bias. Republicans are routinely deemed taxpayer “friends” while Democrats are routinely called taxpayer “enemies.” Norquist himself provides a partisan analysis in the press release announcing ATR’s first enemy of the

taxpayer awards: “It is unfortunate that tax relief and spending cuts are so alien to the Democratic party.” The partisan track record of the 1996 awards, coupled with an FEC enforcement history citing problems with ATR’s coordination of pledge media events with Republican candidates, indicate that ATR’s taxpayer pledge and award programs are partisan in nature and an abuse of federal election laws. They also plainly contradict ATR’s statements to the Committee that ATR “has never advocated the election or defeat of any candidate for any office at any time.”⁹⁴

In fact, on several occasions in 1996, ATR expressed support for or opposition to a particular candidate outside the context of any taxpayer pledge event or award announcement. A case in point is the Kansas Senate race. Republican incumbent Senator Sheila Frahm, appointed to her seat after Senator Dole’s resignation, faced a primary challenge from then-Representative Sam Brownback. On June 13, 1996, Norquist sent a memorandum to “Conservatives [and] Taxpayers” on the subject of “Sam Brownback’s Senate Candidacy.” Norquist’s memorandum states in part:

A very important race is underway in Kansas. Sam Brownback, a leader among the freshman in the U.S. House of Representatives is running for the U.S. Senate seat which has been vacated by Senator Dole. On Tuesday, June 11th, Sheila Frahm was appointed to fill the Dole vacancy until the November election. She will be running against Rep. Brownback in the Republican primary on August 6th. Several taxpayer groups and conservative advocacy groups have inquired about this race. I have analyzed this race, and as a taxpayer activist, I wanted to share the following information that will show the distinction between the candidates.

This race is extremely important to taxpayers in Kansas and to people around the nation. ... Brownback has been an able fighter in bringing about the change that occurred in the House throughout this current Congress. He will bring this change to the Senate. Sam Brownback is a leader who is dedicated to the cause of cutting taxes, reducing the size and scope of government, and passing real term limits legislation. Sheila Frahm stands in the way of these reforms. ... This race is a clear battle between a tax and spend status quo candidate and a tested advocate of taxpayers, Sam Brownback.⁹⁵

Despite a statement in the memorandum that “ATR does not endorse candidates,” this memorandum clearly sends the message that “conservatives and taxpayers” should support Representative Brownback. The memorandum is entitled, “Sam Brownback’s Senate Candidacy.” The second sentence states that “Sam Brownback... is running for the U.S. Senate.” The first paragraph gives the date of the primary election. The body of the memorandum praises Representative Brownback for positions he has espoused in the House of Representatives, and contrasts his record with a description of Senator Frahm as “stand[ing] in the way of these reforms.” ATR’s preference couldn’t be clearer than in its final sentence characterizing the race as “a clear battle between a tax and spend status quo candidate and a tested advocate of the taxpayers, Sam Brownback.”

ATR has also supported specific candidates in general elections. In the 1996 Iowa Senatorial race, for example, between Democratic Senator Tom Harkin and Republican challenger James Lightfoot, citing “lists provided by their campaigns,” the Des Moines Register reported that Lightfoot had received the endorsement of Americans for Tax Reform.⁹⁶ ATR was active in Iowa during the prior election cycle as well. In November 1994 -- just days before election day -- Norquist attended a press conference with Iowa Republican Greg Ganske who was challenging the Democratic incumbent Neal Smith. During the press conference, according to the Des Moines Register, Norquist said, “You have a very strong delegation from Iowa, with the exception of Neal Smith, who stands out like a sore thumb in the eye of the Iowa taxpayer.”⁹⁷

Another example is a 1996 House race involving Democratic Minority Leader Richard Gephardt of Missouri. An ATR press release dated July 8, 1996, announces a press conference to be held in Representative Gephardt’s district in which Norquist will discuss “the proliferation of legislators who feel no accountability towards their constituents.”⁹⁸ The contact person listed on the ATR press release is “Wheeahan for Congress 314-487-8199.” Wheeahan was the Republican candidate opposing Representative Gephardt in 1996. Two versions of the press release state, “If you would like to set up an interview with Mr. Norquist, please contact Charlie Van Esler at (314) 487-8199.” The telephone number was that of the Wheeahan for Congress campaign.

The Norquist memorandum on Representative Brownback, his statements to the media in specific races, ATR press releases issuing taxpayer awards -- each of these activities should be acknowledged for what it is, ATR’s advocating the election or defeat of specific candidates, while ducking compliance with legal requirements for organizations engaged in federal election activity.

ATR: COORDINATED EFFORTS IN 1996 TO ELECT REPUBLICANS TO OFFICE

ATR did more in 1996 than express support for or opposition to specific candidates. ATR also engaged in several efforts to coordinate support for Republican electoral success.

Documents produced to the Committee indicate that ATR coordinated two of its biggest media events in 1996 with Republican organizations. On April 29, according to an RNC-produced document,⁹⁹ a meeting was held in the conference room of the National Republican Congressional Committee to discuss ATR’s upcoming “Tax Freedom Day Event” in May and “Cost of Government Day” in July. Attendees included Norquist and two other persons from ATR; five representatives from the RNC; two representatives from the Dole campaign; two representatives from the Republican Governors Association; one representative each from the Republican Senate Policy Committee and the House Republican Conference; and a representative of Republican Senator Paul Coverdell of Georgia, sponsor of a “Cost of Government Day” resolution.

Since ATR and the RNC both refused to respond to Committee subpoenas to discuss ATR-RNC interactions, little information is available about what happened at this meeting; however, another RNC-produced document dated the next day, April 30, sheds some light.¹⁰⁰

Labeled “Confidential Memorandum,” it is addressed to the “Tax Freedom Day Working Group” and is authored by one of the ATR participants who attended the April 29 meeting the day before. The memorandum states that “we are still standing by for a confirmation from Senator Dole. Gary Koops says he hopes to have an answer for us this afternoon. I have reminded him that satellite availability and coalitions turnout could be a real problem if we delay much further.” Koops attended the April 29 meeting on behalf of the Dole campaign. The memorandum also states that, to join a conference call later that day, persons should ask for the “Tax Freedom Day Working Group call.” Read together, the April 29 and 30 memoranda contain compelling evidence that ATR had formed a working group with Republican organizations and candidates, including Senator Dole, to coordinate its media events in May and July -- exactly the type of improper media coordination that ATR had been cited for by the FEC in 1986.¹⁰¹

Another key development was ATR’s decision to host weekly meetings in its offices that, at least in part, addressed the 1996 elections. These Wednesday morning meetings were convened by Norquist, attended by 50-70 conservative activists at a time, and regularly attended by such groups as the Christian Coalition, the National Right to Life Committee, the U.S. Chamber of Commerce, the National Rifle Association, the Seniors Coalition, and GOPAC.¹⁰² According to ATR’s own policy documents, these meetings also included “Capitol Hill staffers, candidates for national office, and visiting Members of Congress.”¹⁰³ One meeting, on September 18, took place at the U.S. Capitol, presumably at the invitation of House Speaker Gingrich who spoke to the group about “how Republicans should conduct their campaigns.”¹⁰⁴ At the end of his remarks, Norquist presented the Speaker with an ATR Friend of the Taxpayer Award.¹⁰⁵

As chronicled in Elizabeth Drew’s book Whatever It Takes, these meetings often served as strategy sessions for the 1996 elections. Drew recounts, for example, group discussions of GOP presidential primaries and candidates such as Senator Dole, Patrick Buchanan, Steve Forbes, and Lamar Alexander,¹⁰⁶ as well as specific House and Senate races such as the Kansas Senate race.¹⁰⁷ In some instances, meeting participants reported on a specific election contest. For example, after a Washington state primary showed Republican Representative Randy Tate trailing his Democratic challenger, a representative of GOPAC told the meeting, “We need to pay attention. This is problematic. ... We have our work cut out in Washington State.”¹⁰⁸ In other instances, staff from the National Republican Congressional Committee or National Republican Senatorial Committee provided detailed briefings on specific races.¹⁰⁹

In still other instances, Republican candidates made formal presentations at the meetings and requested support for their election efforts.¹¹⁰ For example, Representative Tate, running for re-election in the House, and Representative Brownback, running for election to the Senate, were permitted to address the meeting and request the support of the groups represented there.¹¹¹ Michael Hammond, running in a Republican primary against a congressman in New Hampshire, was allowed to explain why attendees should support him rather than the Republican incumbent.¹¹² At a meeting on September 11, 1996, four Republican candidates made such presentations. Drew writes:

The federal election law stipulates that interest groups aren’t supposed to coordinate their

efforts for or against a candidate, but what actually goes on appears to be a distinction without a difference. [One meeting participant] said, “The Federal Election Commission says you can’t coordinate, but everybody talks to each other.” He added, “We make a practice of not talking specific amounts with each other. We talk about who’s targeted, how somebody’s doing, but not in terms of ‘Why don’t you throw in three thousand and we’ll throw in five thousand.’” This is a very narrow interpretation of the law.¹¹³

RNC-DIRECTED CONTRIBUTIONS TO ATR

A final area of concern in 1996 involves documents in the Committee’s possession which reveal that, in addition to transferring \$4.6 million of its own funds to ATR, the RNC also solicited funds from third parties and directed those contributions to ATR.

A memorandum dated October 17, 1996, marked “confidential,” from Jo-Anne Coe, RNC finance director, to Haley Barbour, RNC chairman; Sanford McCallister, RNC general counsel, and Curt Anderson, RNC political director, discusses efforts by Coe to forward certain sums of money to three tax-exempt organizations, including a \$100,000 check from Carl Lindner to ATR, another \$100,000 check from Lindner to the National Right to Life Committee, and \$950,000 from several sources to the American Defense Institute.¹¹⁴ The memorandum poses questions about how certain checks should be handled and requests quick action “so I can put this project to bed.”

The “project” itself is not described in the memorandum; however, a second document may provide additional information. It is an October 21 memorandum from Coe to Barbour. This memorandum states:

As soon as we meet and hopefully come to some resolution on the joint state mail project, I will forward these checks to the three organizations. In the meantime, I am respectfully withholding delivery of the checks until we have the opportunity to discuss this matter.¹¹⁵

Could the “joint state mail project” be the “project” referred to in the October 17 memo from Coe to Barbour? Could it be a reference to ATR’s \$3.3 million direct mail-phone bank operation on Medicare? The fact that the RNC finance director was “respectfully withholding” checks to three organizations appears to be evidence that the RNC was exercising control over the performance of those organizations in the joint state mail project in exchange for funding. The fact that this document was produced, not by the RNC or ATR, but by the Dole for President committee indicates possible participation of the Dole campaign in these efforts as well.

Two letters written by Coe on the same date as her memorandum to Barbour on the joint state mail project offer additional clues.¹¹⁶ The first letter is addressed to Norquist at ATR and the second to David O’Steen, the executive director of the National Right To Life Committee. Each encloses a \$100,000 check from Carl Lindner to the organization, as described in the October 17 memo. Coe states in both letters, “Glad to be of some help. Keep up the good

work.” A review of ATR’s bank records shows that ATR deposited a \$100,000 check on October 23.¹¹⁷ It thus appears that the RNC directed contributors to write checks payable to specified tax-exempt organizations such as ATR, but to send them to the RNC. The RNC then forwarded the checks to the organizations, possibly in exchange for participation in the “joint state mail project” or other campaign activities.

Two additional documents also contain evidence of RNC coordination with ATR and other tax-exempt organizations. The first¹¹⁸ was produced by the RNC and has the same distinctive “confidential” heading as the October 17 memo from Coe to top RNC officials. This document discusses contributions to ATR, National Right to Life Committee, American Defense Institute, United Seniors Association, the City of San Diego, and “CCRI,” which was the California ballot initiative on affirmative action. Each organization is analyzed in terms of whether contributions to it would have to be reported to the public and whether a contribution would be tax deductible. The final document is a list of the same organizations with the exception of the CCRI.¹¹⁹ By each organization’s name is a large dollar figure. The figure for ATR is \$6 million. Altogether, the figures add up to \$15.1 million.

The significance of these two documents and the dollar figures is unclear. Could the \$6 million figure for ATR indicate that in addition to giving ATR \$4.6 million directly, the RNC directed another \$1.4 million to ATR in third party contributions to ATR?¹²⁰ If the same is true for the other listed organizations, the RNC may have directed more than \$9 million in undisclosed third party contributions to these groups. In the absence of Committee subpoenas being issued or enforced, however, the extent to which the RNC obtained contributions for ATR and other tax-exempt organizations and what it received in return for this fundraising remain unclear.

ATR AND RNC’S REFUSAL TO COOPERATE

On April 9, 1997, Grover Norquist was quoted in the press as saying that he would “cheerfully testify before the Committee.”¹²¹ He thereafter continuously refused to be deposed or interviewed by the Committee staff. When subpoenaed for a deposition in September 1997,¹²² he refused to instruct his attorney to accept service of the subpoena,¹²³ and he failed to appear. In fact, despite repeated requests and efforts by the Minority to seek ATR testimony either voluntarily or by subpoena, no one from ATR ever submitted to an interview or a deposition by this Committee. As noted above, ATR also refused to comply with the Committee’s document subpoena, claiming, “ATR has never engaged in electioneering of any sort. It has never advocated the election or defeat of any candidate for any office at any time; it has never run political advertising on any subject.”¹²⁴ Having cloaked itself in this self-serving proclamation, ATR refused further cooperation or compliance with document or deposition subpoenas, thereby making a mockery of the Committee’s subpoena process. Despite requests from the Minority that the Chairman issue an order compelling ATR to comply with the Committee’s subpoena, no action was ever taken by the Committee to enforce its subpoena authority.

The RNC was equally intransigent. Not one RNC official ever provided an interview or deposition testimony on the \$4.6 million transfer or on any dealings between the RNC and ATR.

POSSIBLE CIVIL, CRIMINAL AND TAX LAW VIOLATIONS

The facts and documents behind the RNC's \$4.6 million transfer to ATR are compelling support for the proposition that the RNC used ATR as a surrogate to do what the RNC itself had neither the hard dollars nor the "credibility" to do on its own. In addition to questions of impropriety, questions arise regarding four sets of possible legal violations by ATR and the RNC.

Circumvention

The first and most serious issue involves the RNC's possibly deliberate circumvention of hard money requirements in funding ATR's election-related efforts.

With respect to the Medicare direct mail and phone bank operation, FEC rulings are clear that if the RNC had funded this issue advocacy effort directly, it would have had to pay the bills with a mix of hard and soft dollars.¹²⁵ Sixty-five percent of the cost would have had to come from hard dollars that complied with federal contribution limits. The RNC instead funded the Medicare effort indirectly through ATR using only soft dollars. These funds were wired into ATR's bank account for as short a period as two hours before ATR used them to pay for Medicare mailings and telephone calls that clearly benefited the GOP. Given the coordination between the RNC and ATR on how these funds would be used, their brief detour through ATR's bank account is possibly insufficient to relieve the RNC of its legal obligation to comply with hard money requirements, including contribution limits and disclosure.

The same analysis applies to RNC funds used by ATR to pay for \$383,000 in televised ads attacking the Democratic Senatorial candidate in New Jersey, and perhaps for other television attack ads aimed at Democratic candidates. The RNC funds used to pay for the televised ads consisted entirely of soft dollars. If the RNC had sponsored these television ads directly, it could have been required to pay for them entirely with hard dollars or, at a minimum, 65 percent with hard dollars. Sponsoring the ads directly also would have subjected the RNC to federal limits on the direct contributions and coordinated expenditures that a national political party may make with respect to a particular Senate race. In the 1996 New Jersey Senate race, section 441a(h) of the Federal Election Campaign Act limited the RNC to no more than \$17,500 in direct contributions to the GOP Senate candidate, while section 441a(d)(3) limited the RNC to coordinated expenditures of no more than \$369,807. ATR spent \$383,000 on the New Jersey television attack ads alone. ATR's sponsorship of the Torricelli attack ads, paid for in whole or in part with RNC soft dollars, appears to have been a deliberate ploy to allow the RNC to evade federal limits on contributions and coordinated spending in that Senate race.

Coordination

A second issue concerns improper or illegal coordination. The evidence is compelling that extensive coordination took place between ATR and the RNC regarding ATR's Medicare direct mail and phone bank operation. The documents show that ATR's taxpayer pledge, Tax Freedom Day and Cost of Government Day media events were coordinated with several Republican

organizations and candidates. ATR's weekly meetings repeatedly analyzed specific candidates, races and election strategy. Those meetings were attended by Republican Party officials, candidates and persons sympathetic to electing Republicans to federal office. Although more information is needed to establish violations of federal election law, the evidence available to date justifies an immediate in-depth investigation by the FEC and Justice Department.

Another coordination issue arises from the documents establishing that the RNC directed contributions from third parties to ATR and other tax-exempt groups. Although pending campaign finance reform measures such as S. 25, the McCain-Feingold bill, would outlaw this practice, it is currently not against the law for a political party to suggest that a person make a contribution to a tax-exempt organization. Even under current law, however, a directed contribution may become an illegal act, if the timing of that contribution is controlled by the political party that arranged it or made contingent upon the recipient taking action at the suggestion of, or in coordination with, the party. In the case of ATR, remaining questions include how many contributions the RNC directed to ATR in addition to the \$100,000 contribution from businessman Carl Lindner; how those funds were used by ATR; whether the RNC exercised control over the expenditure of the funds or over other ATR activities in exchange for the funds; and whether the facts indicate the directed contributions were an attempt to circumvent contribution limits and disclosure requirements.

Directed contributions between a national political party and tax-exempt organizations was a topic of concern for the Committee when the political party involved was the Democratic Party. The Committee held an entire day of hearings to take testimony from businessman Warren Meddoff regarding his discussions with Harold Ickes, former deputy chief of staff in the White House, about possible contributions to tax-exempt organizations by a Meddoff associate. As discussed in Chapter 17 of this Report, Ickes's suggestions were made in response to a request from Meddoff, and no contributions were ever made. The RNC did much more than make suggestions -- it collected checks, controlled checks, and delivered checks to tax-exempt organizations sympathetic to the Republican Party -- yet not a single witness was called to testify on such RNC conduct.

Disclosure

A third issue involves disclosure. RNC Chairman Haley Barbour stated in an October 29 press conference that, "[d]isclosure of contributions and expenditures, shining the bright light of public scrutiny, is the fundamental principle underlying our campaign finance laws."¹²⁶ Yet the RNC's payment of \$4.6 million to ATR, when coupled with ATR's decision not to file any FEC reports on its activities, effectively prevented all disclosure of expenditures paid for with RNC funds. The Medicare mailings and telephone calls, for example, were represented as ATR-sponsored efforts, and RNC funding was kept secret. When asked about television ads, ATR denied to the press and to this Committee that it engaged in television advertising, thereby hiding its televised attack ads on the New Jersey Democratic Senatorial candidate and keeping doubly secret the use of RNC funds to pay for those ads. Additional investigation by the FEC and Justice Department should be undertaken to establish whether the RNC and ATR improperly or illegally

evaded federal disclosure requirements by ATR's failing to file any FEC reports on its activities.

Tax Laws

A fourth issue involves federal tax law, in particular ATR's possible abuse of its tax-exempt status and whether either ATR or the RNC should have, but failed to, report the \$4.6 million as taxable income.

ATR is exempt from taxation under Internal Revenue Code section 501(c)(4). A 501(c)(4) organization is required to be engaged in social welfare that promotes "the common good and general welfare of the people of the community."¹²⁷ Social welfare organizations may not engage in campaign-related activity as their primary activity. The relevant tax code regulation, 26 CFR 1.501(c)(4)-1, describes the prohibited activity as "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Campaign activity that a 501(c)(4) organization does engage in must be nonpartisan, so that the organization does not confer a private benefit on a particular political party, in violation of its tax-exempt status.¹²⁸

An analysis of ATR's bank records for 1996 indicates that the \$4.6 million donated by the RNC provided more than two-thirds of ATR's 1996 income.¹²⁹ Despite ATR's claim to be a grassroots organization supported by taxpayers across the country, its bank records indicate that only \$12,470, or less than 0.2% of its 1996 deposits, came from donations of \$1,000 or less.¹³⁰ The fact that RNC funds outmatched all other sources of ATR funding by a 2-1 margin is compelling evidence that, in 1996, electioneering was ATR's dominant pursuit, in violation of its tax-exempt status. ATR's key activities during the year -- from its multimillion-dollar Medicare direct mail-phone bank operation to its advocacy of particular candidates to its active support of Republican electoral success -- provide added evidence that electioneering dominated. A second possible violation of ATR's tax-exempt status lies in the fact that its election pursuits were clearly partisan in favor of the Republican Party. Partisan activities do not promote "the common good" required of 501(c)(4) social welfare organizations, but confer a private benefit on the favored political party.¹³¹ Together, ATR's partisan, election-driven activities strongly suggest that it may have violated its tax-exempt status.

A similar analysis applies to the Americans for Tax Reform Foundation, a 501(c)(3) organization prohibited by federal tax law from engaging in any campaign activity.¹³² The facts and documents indicate that the Foundation served as a second conduit for RNC funds, paid nearly half the bills associated with the Medicare direct mail-phone bank operation, and placed its name on at least one of the three Medicare mailings. The Foundation's participation in this RNC-funded, election-related effort appears to violate the legal prohibitions against a 501(c)(3) charitable organization's participating, directly or indirectly, in campaign activity and against its operating to benefit a private interest such as the Republican Party.

A final issue is how the RNC and ATR treated the \$4.6 million on their tax returns. Section 527 of the federal tax code suggests that one or the other organization may have been

required to treat this sum as taxable income. As a political organization, the RNC's income is exempt from taxation to the extent it is used for the purpose of influencing an election.¹³³ If the money which the RNC received from contributors and then transferred to ATR was for election-related purposes, then the RNC could exclude the amount from its taxable income; however, if the RNC made a non-election-related, charitable contribution to ATR, then it is possible that this income is taxable to the RNC. Conversely, ATR's income is exempt from taxation to the extent that it is used for charitable and not election-related purposes.¹³⁴ While ATR is entitled to engage in a limited amount of election-related activity, income expended on such activity is taxable. It would thus seem that if the \$4.6 million was for an election-related purpose, the RNC could exclude it from its taxable income, but ATR could not. In contrast, if the \$4.6 million was for a charitable purpose, then ATR could exclude it from its taxable income, but the RNC could not. It is unclear how either organization treated this money, whether any tax was paid, and whether any violation of tax law occurred as a result, but what is clear is that this issue merits further investigation and analysis by the appropriate authorities within the Department of the Treasury.

CONCLUSION

The facts and documents, as well as the public statements of Haley Barbour and Grover Norquist, make it clear that RNC soft money -- \$4.6 million in all -- flowed through ATR bank accounts and paid for a multimillion-dollar direct mail-phone bank operation as well as other election-related efforts such as television attack ads. It is also clear that if the RNC had paid for these election-related efforts directly, it would have required substantial amounts of hard dollars. The facts suggest that the RNC laundered 1996 soft dollars through ATR in order to avoid using hard money to pay for election-related activities, to capitalize on ATR's ostensibly greater credibility, and to avoid public disclosure of RNC involvement.

The facts and documents also show that, in 1996, ATR undertook a host of partisan activities to support the Republican agenda and elect Republican candidates to office. ATR's efforts included taxpayer pledge and award media events coordinated with specific candidates; Tax Freedom Day and Cost of Government Day media events coordinated with Republican organizations, and weekly meetings with outside groups designed in part to further Republican electoral success in 1996. These partisan, election-driven activities appear to violate the tax-exempt status of ATR and its Foundation; ATR's coordination with the Republican Party may have resulted in other federal election law violations as well.

Was the RNC directing contributions from third parties to ATR to circumvent contribution limits and disclosure requirements? Did the RNC and ATR violate campaign disclosure requirements? Did the RNC or ATR violate federal tax law in how they reported the \$4.6 million on their tax returns?

The evidence of possible civil, criminal, and tax-law violations involving ATR is powerful and should have been explored at a Committee hearing with full opportunity for examination and cross-examination. Unfortunately for the American public, ATR's role in the 1996 elections remained largely unexplored in this Committee's investigation. The Committee did not call a

single hearing witness to testify about the \$4.6 million transfer. The Committee rejected repeated requests from the Minority to hold hearings on the subject. Committee investigators were thwarted in their efforts to interview or depose witnesses from the RNC or ATR regarding the \$4.6 million or any other dealings between the two organizations. Despite public statements promising cooperation, no one from either the RNC or Americans for Tax Reform provided any testimony to the Committee, in public or in private, regarding the relationship between the RNC and ATR.

The Committee's failure to investigate does not, however, eliminate ATR or the RNC's potential legal liability. Because of the quality of the evidence and the potentially serious misconduct involved, the Minority has determined to refer information regarding the apparent coordination between the RNC and ATR to the U.S. Departments of Justice and Treasury and the FEC for further investigation into potential civil, criminal, and tax-law violations.

1. The original officers of ATR were Peter Ferrara, president, and William P. Barr, the secretary/treasurer. See also letter from John M. Richman, chairman and CEO, Dart & Kraft to William E.C. Dearden, chairman, Hershey Foods Corporation, 10/3/85, ATR000579.
2. FEC MUR 4204, ATR Answers to Interrogatories, Section A, question (1). To qualify under IRC section 501(c)(4), an organization must be operated to benefit the common good and general welfare of the community.
3. Articles of Incorporation of Americans for Tax Reform, amended 3/31/93, ATR000013.
4. Articles of Incorporation of Americans for Tax Reform, amended 3/31/93, ATR000013.
5. In addition to the Foundation, ATR's affiliated organizations include Citizens Against a National Sales Tax; Women for Tax Reform, a 501(c)(4) corporation; and the Anti-Tax PAC, a political action committee established 4/5/96, but inactive during the 1996 election cycle. Norquist also recently established The Merritt Group Ltd., a lobbying firm in which he is a principal along with two senior ATR employees and a fourth individual from outside of ATR.
6. Letter from Jeffrey L. Yablon to Whom It May Concern at the Internal Revenue Service, submitting ATRF and ATR's applications for tax-exempt status; Application for Recognition of Exemption, Form 1023, Attachment F, submitted by Fairness for Families, the former name of ATRF, 8/30/85.
7. Articles of incorporation of Fairness for Families, the former name of ATRF, 7/2/85, p. 1; Application for Recognition of Exemption, Form 1023, Attachment E, submitted by Fairness for Families, 8/30/85.
8. FEC MUR 4204, ATR Answers to Interrogatories, Section A, question (3).
9. Drew, Elizabeth, Whatever It Takes, New York: Penguin Books USA Inc., 1997, p. 7.
10. Drew, p. 8.
11. Norquist, Grover, Rock the House: History of the New American Revolution, Ft. Lauderdale, FL: VYTIS Press, Inc., 1995, "About the Author."
12. Norquist, "About the Author."
13. Norquist, "Prologue" by Speaker Gingrich; Roll Call, 2/6/97.
14. R027732
15. R006050
16. See R047456-047458.

17. Drew, p. 14.
18. Drew, pp. 182-83.
19. Baltimore Sun, 4/17/95, p. 2A.
20. In his book, Rock the House, pp. x-xi, Norquist writes: "The Republican capture of the House of Representatives is the culmination of a 40-year struggle by a conservative nation to overthrow a liberal political elite that has used gerrymandering, incumbent protection laws, and taxpayer dollars to stay in power....Chapter One begins by describing what actually happened on election day, November 8, 1994: the size and depth of the Republican victory and the overturning of the old order....It means that more than 50,000 Democrat political activists have lost their hold on taxpayer-supported positions as a result of this election."
21. ATR's annual income in 1994 and 1995 was less than \$1 million each year. ATR's IRS Form 990 for 1994 and 1995.
22. Letter from Thomas Wilson of Lane & Mittendorf to Majority Counsel, 6/11/97.
23. Daily Teleconference with RNC Chairman Haley Barbour, 10/25/96, reported by Federal News Service, Federal Information Systems Corporation.
24. ATR000048.
25. See, for example, ATR000194-197 & ATR000504-505.
26. ATR000194-195.
27. ATR000512-19.
28. R014844.
29. R014844.
30. ATR000560.
31. See ATR/R00001-00942.
32. Committee Subpoena 000348, issued 8/21/97.
33. See ATR/R00864.
34. See ATR/R00871 & ATR/R00875.
35. See ATR/R00866.

36. See ATR000560.
37. See ATR/R00867.
38. See ATR/R00877 & ATR000560.
39. See ATR/R00868.
40. See ATR/R00881.
41. Washington Post, 10/29/96.
42. Drew, p. 223.
43. Washington Post, 12/10/96. The John Grotta Company proposal for the Medicare direct mail-phone bank operation is dated 7/8/96, three months before ATR received the first \$2 million from the RNC.
44. "Haley Barbour, Chairman of the Republican National Committee, Discusses Democratic National Committee Refusal of Pre-Election FEC Report," Presidential Campaign Press Materials, Federal Document Clearing House, Inc., 10/29/96.
45. Washington Post, 2/9/97.
46. See RNC filings with FEC, 9/30/96 and 10/16/96. See also Newsday, 12/28/97.
47. FEC Advisory Opinion 1995-25.
48. ATR has not identified the 150 Congressional districts, nor how they were selected. The "Field Dogs" memorandum, supra, however, shows that at a minimum the RNC was fully informed of the particular districts selected.
49. 26 USC 501(c)(3); 26 CFR 1.501(c)(3)-1(d)(1)(ii) ("it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests"); The Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2nd Cir. 1988), cert. denied, 1989 (even insubstantial political activity endangers an organization's exemption under section 501(c)(3)); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (Republican organizations and candidates are not a charitable class, but a private interest; an organization operated for the benefit of Republican organizations or candidates does not qualify for tax exemption under section 501(c)(3)).
50. The ATR Foundation's involvement in the direct mail-phone bank operation was difficult to uncover due to incomplete document production. The Foundation never produced, for example, any bank records. Although ATR's bank had possession of and was willing to produce the Foundation records, it felt it could not do so under the wording of the Committee subpoena without ATR's consent. ATR refused to allow the bank to produce the Foundation records. See

letter from Thomas E. Wilson of Lane & Mittendorf, to Alan Edelman, Associate Counsel to the Minority, 9/19/97. When the Ranking Member subsequently asked the Chairman to issue a new subpoena to the bank explicitly requesting ATRF records, the request was ignored. See letters from Senator Glenn to Chairman Thompson, 10/1/97 and 10/14/97. This forced the Minority to re-create the Foundation's role from documents already obtained.

ATR's bank documents indicate that on October 4, 1996, the RNC wired \$2 million to ATR. See Document ATR/R00864. On October 17, the RNC wired another \$1 million to ATR. Document ATR/R00866. The next day -- October 18 -- ATR transferred \$508,000 to the ATR Foundation. Document ATR/R00844. Four days after that -- on October 22nd -- ATR transferred another \$851,000 to the Foundation. Documents ATR/R00846 & ATR/R00848. The RNC wired yet another \$1 million to ATR on October 25. Document ATR/R00867. That same day, ATR transferred the \$1 million to the Foundation. Document ATR/R00852. The result is a pattern of the RNC transferring money to ATR, and ATR then either using that money directly to pay the John Grotta bills or routing it through its Foundation to pay the John Grotta bills. This pattern is all the more striking, because ATR bank records for the preceding year and a half, from June 1995 to December 1996, do not indicate a single month in which ATR transferred money to its Foundation. Yet in October 1996, ATR transferred over \$2 million to ATRF.

Two types of evidence indicate that the Foundation used the RNC funds to help pay for the direct mail-phone bank effort. First, comparing the October 29 Grotta invoice, Document ATR000560, to ATR bank records shows that for every recorded bill payment but two there is a corresponding wire transfer from ATR's bank account to the John Grotta Company. The two exceptions are two bill payments that are both shown as having been made on October 25 -- one in the amount of \$468,000 and one in the amount of \$1,104,000. Both payments are shown on the invoice as having been made by ATR, but there is no corresponding wire transfer from ATR's bank account. However, both payments were made after ATR had transferred over \$2 million to the ATR Foundation. Logic suggests that the Foundation must have made both bill payments on ATR's behalf. While the Foundation's bank records would have provided affirmative proof of its payments to Grotta, the Minority's requests for these bank records were denied. In the meantime, one of the mailings paid for with RNC funds, Document ATR000194-000195, states that it was "[p]aid for by AMERICANS FOR TAX REFORM FOUNDATION."

51. ATR000194-000195

52. Washington Post, 12/10/96.

53. Letter from Thomas Wilson of Lane & Mittendorf, to Majority Chief Counsel Michael Madigan, 6/11/97.

54. A copy of the videotape is maintained in the files of the Committee.

55. ATR000101

56. ATR000106
57. ATR000107-000108
58. ATR/R00590
59. ATR/R00602
60. See ATR/R00870,00873,00878,00880
61. Women for Tax Reform Media Reminder, 8/21/96, alerting media to a press event that day on the formation of the group and its intention to televise anti-Clinton ads.
62. Women for Tax Reform Media Reminder, 8/21/96, alerting media to a press event that day on the formation of the group and its intention to televise anti-Clinton ads.
63. It is interesting to note that Women for Tax Reform was formed with a contribution of \$100,000 from a single, private (and unnamed) individual. See Exhibit C to Form 1024, Application for Recognition of Exemption Under Section 501(a), WTR0070.
64. See Exhibit C to Form 1024, Application for Recognition of Exemption Under Section 501(a), WTR0070. Women for Tax Reform was granted tax exempt status under Section 501(c)(4) by the Department of Treasury on November 6, 1996, see WTR0024-0025.
65. See Exhibit C to Form 1024, Application for Recognition of Exemption Under Section 501(a), WTR0070.
66. Exhibit C to Form 1024, Application for Recognition of Exemption Under Section 501(a), WTR0070.
67. R001938.
68. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 2.
69. FEC MUR 4204, General Counsel's Report, 9/10/96, pp. 2, 5. In recent years, ATR has presented federal candidates with two additional pledges, an "anti-VAT pledge" opposing a national value added tax, and a "legislative probity pledge" opposing certain health care reform legislation. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 2; ATR000816.
70. FEC MUR 2269.
71. FEC MUR 4204.
72. FEC MUR 4204, General Counsel's Report, 9/10/96.
73. See, for example, Kansas City Star, 4/11/95.

74. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 8.
75. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 8.
76. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 9.
77. FEC MUR 4204, General Counsel's Report, 9/10/96, p. 9.
78. FEC MUR 4204, General Counsel's Report, 9/10/96.
79. There was one vacancy on the Commission at the time.
80. FEC MUR 4204, Statement of Reasons, 12/10/96.
81. R 004610.
82. ATR000056-57.
83. ATR000056-57.
84. In September, ATR also held a "Taxpayer Salute to the 104th Congress" in the Cannon Caucus Room of the U.S. House of Representatives to thank the Republican House for its work and "to get earned media attention for the accomplishments of the 104th Congress." Documents ATR000659 and ATR000058. A 9/17/96 memoranda from Norquist inviting attendance at the event is addressed to "House Republican Members and Staff" and states that the program will feature the "Republican leadership." Document ATR000659. This "Salute" is another example of an ATR-sponsored media event benefiting the Republican Party prior to the 1996 elections.
85. ATR000272.
86. ATR000599-599F.
87. ATR000054.
88. ATR000054; ATR states elsewhere in the document, on ATR000048, that the award went to 210 officeholders, but the specific list of award-winners includes 209 names. The sole Democrat who won the award did not run a general election campaign in 1996, having lost in the primary.
89. ATR000388.
90. The basis for this exception is unclear, but may have been due to the symbolic importance of his seat to the Republican Party. Rep. Nethercutt had gained office in 1994 by defeating Democratic Speaker of the House Thomas Foley.
91. ATR000536-46.

92. ATR000536-46.

93. ATR000056. It is possible that one Democrat, Representative James Traficant of Ohio, received the award, but ATR's refusal to cooperate with the Committee prevented making a final determination.

94. Letter from Thomas Wilson, of Lane & Mittendorf, to Majority Chief Counsel Michael Madigan, 6/11/97.

95. ATR000547.

96. The Des Moines Register, 11/3/96.

97. The Des Moines Register, 11/2/94. At the time of Norquist's statement, Rep. Smith was the only Democratic member of the Iowa congressional delegation.

98. ATR000549-551.

99. R 047272.

100. R 004605.

101. ATR's 1996 annual report on its activities also states that RNC Chairman Haley Barbour "issued a three-page press release on [Cost of Government Day]. The RNC also sent copies of our information packet to all state Republican parties." It states that Norquist gave a June briefing to "Republican district directors"; ATR was "involved in putting together a briefing paper and talking points for the House Republican Conference"; and that ATR "contributed language on Cost of Government Day for the GOP National Convention." ATR 000052-54.

102. Drew, pp. 5-6.

103. ATR000087

104. Drew, p. 168.

105. Drew, p. 169.

106. Drew, pp. 1, 155-56. Anti-Clinton discussions also took place; Drew, pp. 82-84, 206-7.

107. Drew, pp. 86, 111, 156, 168, 184, 207-9.

108. Drew, pp. 167-68.

109. Drew, p. 207.

110. Drew, pp. 65, 84, 156.

111. See Drew, pp. 65, 156.
112. See Drew, p. 84.
113. Drew, pp. 18-19.
114. DFP004240. This document was produced to the Committee by the Dole for President campaign.
115. DFP004242.
116. DFP004241 & DFP004243.
117. ATR/R00850. A second check for \$100,000 was deposited on 10/28/96. ATR/R00854.
118. R021609.
119. DFP004244.
120. An analysis of ATR's bank records shows that, from August 1 to October 31, 1996, ATR received more than \$5.8 million in major donations, including \$4.6 million from the RNC, four \$100,000 donations, one \$75,000 donation, four \$50,000 donations, two \$30,000 donations, and nine \$25,000 donations. In addition, ATR received a \$10,000 donation from the Coalition for Our Children's Future. CCF000384-85.
121. Associated Press, 4/9/97.
122. See Committee subpoena 000390.
123. Letter from Thomas Wilson of Lane & Mittendorf, to Majority Chief Counsel Michael Madigan, 9/19/97.
124. Letter from Thomas Wilson of Lane & Mittendorf, to Majority Chief Counsel Michael Madigan, 6/11/97.
125. FEC Advisory Opinion 1995-25 to RNC.
126. "Haley Barbour, Chairman of the Republican National Committee, Discusses Democratic National Committee Refusal of Pre-Election FEC Report," Presidential Campaign Press Materials, Federal Document Clearing House, Inc., 10/29/96.
127. 26 CFR 1.501(c)(4)-1(a).
128. See IRS decision letter disqualifying National Policy Forum from tax exemption under Section 501(c)(4) due to partisan activities, 2/21/97. See also Footnote 49.

129. An analysis of ATR's bank records shows that, from August 1 to October 31, ATR received more than \$5.8 million in major donations, including \$4.6 million from the RNC, for \$100,000 donations, one \$75,000 donation, four \$50,000 donations, two \$30,000 donations, and nine \$25,000. In addition, ATR received a \$10,000 donation from the Coalition for Our Children's Future. CCF000384-85..

130. Norquist's statement that, "ATR didn't receive more than ten percent of its funds from any one company or industry," Drew, p. 10, is therefore misleading, since the majority of its funding in 1996 came from the RNC and a few other sources.

131. See footnote 49.

132. See footnote 49.

133. See 26 U.S.C. 527(a) and (e)(2).

134. See 26 U.S.C. 501(a) and 527(f).